MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

COMMUTER RAIL PROCUREMENT

REQUEST FOR QUALIFICATIONS

Revised June 28, 2012
Pursuant to Addendum No. 1

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1. Introduction and General Information

This Request for Qualifications (RFQ) is seeking a limited number of qualified Proposers for the operations and maintenance of the Massachusetts Bay Transportation Authority's (MBTA) Commuter Rail system. It is currently anticipated that, in addition to operations and maintenance of the Commuter Rail, a contract awarded pursuant to this procurement may also include participation of the contractor in the MBTA's capital program. The contractor's role is further defined in the scope of services in Section 3.3 (General Scope and Contracting Form and Methodology).

The MBTA is a body politic and corporate, and a political subdivision of the Commonwealth of Massachusetts formed in 1964 to finance and operate bus, subway, commuter rail, paratransit and ferry systems in the greater Boston, Massachusetts, area. The MBTA is committed to providing safe, reliable, and efficient transportation to the region it serves.

The MBTA's Commuter Rail system is the fifth-busiest commuter rail in the country, after only the New York and Chicago area systems. The lines go as far south as Wickford Junction, Rhode Island, and as far north as Newburyport, and as far west as Worcester and Fitchburg, Massachusetts. Trains originate and terminate in Boston at either South Station or North Station. Both transportation hubs offer connections to Amtrak, local bus, and subway lines.

The MBTA operates between 485 and 490 revenue trains each weekday serving approximately 140,000 passenger trips. Approximately 190 and 160 revenue trains are operated Saturdays and Sundays, respectively. Service is provided utilizing a fleet of 410 passenger coaches and 82 locomotives, and additional non-revenue rail and road vehicles. The MBTA's system includes 13 lines and 134 stations operating over 671 track miles.

The service is currently operated and maintained by a contractor working pursuant to an operating agreement with the MBTA, which expires December 31, 2013. The MBTA intends to select a Commuter Rail contractor after a two-phase selection process including this RFQ and a subsequent Request for Proposals (RFP) to be issued in early fall 2012. The MBTA plans to make an award under a new operating agreement in early summer 2013. Please see Section 4.3 (Procurement Schedule) for additional dates.

Statements of Qualifications (SOQ) will only be accepted from Proposers intending to provide all services required under the Contract. Responses from individual firms not offering to provide all required services will not be accepted.

2. Abbreviations and Definitions

This Request for Qualifications includes abbreviations and specific defined terms as indicated below.

2.1 Abbreviations

CFO	Chief Financial Officer
CPA	Certified Public Accountant
DBE	Disadvantaged Business Enterprise

EEO	Equal Employment Opportunity
FTA	Federal Transit Administration
FY	Fiscal Year
GAAP	Generally Accepted Accounting Principles
JV	Joint Venture
LLC	Limited Liability Company
MBTA	Massachusetts Bay Transportation Authority
MOU	Memorandum of Understanding
NTP	Notice to Proceed
RFP	Request for Proposals
RFQ	Request for Qualifications
SEC	Securities and Exchange Commission
SOMWBA	State Office of Minority and Women Business Assistance
SOQ	Statement of Qualifications
US	United States

2.2 Definitions

"**Addenda**" means supplemental additions, deletions, and modifications to the provisions of the RFQ after the advertisement date of the RFQ.

"**Clarifications**" means a written exchange of information that takes place between a Proposer and the MBTA after the receipt of all SOQs during the evaluation process. The purpose of Clarifications is to address ambiguities, omissions, errors or mistakes, and clerical revisions in an SOQ.

"**Commuter Rail Services**" means the operation and maintenance of commuter rail trains and associated infrastructure.

"**Contract**" means the written agreement between the MBTA and the successful Proposer setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the Commuter Rail Services. The Contract includes the Contract Documents identified in the Request for Proposals (RFP); the successful Proposer's Proposal, including any technical or price documents; the Notice to Proceed (NTP); and any amendments and change orders that are required to complete the performance of the Contract in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

"**Contract Documents**" means the individual parts of the Contract, as will be identified in the RFP, and all provisions required by law to be inserted in the Contract whether actually inserted or not. Whenever separate publications are referenced in the Contract Documents, it is understood to mean the publication, as amended, current on the date of advertisement, unless otherwise noted.

"**Instructions to Proposers**" means those documents containing directions for the preparation and submittal of information by the Proposers in response to the RFP.

"**Massachusetts Bay Transportation Authority**" or "**MBTA**" means the authority created in 1964 by an act of the Massachusetts General Court, operating under and empowered by Chapter 161A of the General Laws. Among other things, the MBTA is empowered to provide public transportation services, including Commuter Rail Services, either directly or by contract.

"**Proposal**" means the offer (in response to the RFP) of the Proposer for the performance of the Contract, when executed and submitted in the prescribed format and on the prescribed forms.

"**Proposer**" means a single legal entity submitting an SOQ in response to this RFQ, and, if selected for the Short-List, an entity submitting a Proposal.

"**Reference Documents**" means the documents provided with and so designated in the RFP. The Reference Documents are not Contract Documents and are provided to the Proposers for informational purposes only.

"**Request for Proposals**" or "**RFP**" means a written solicitation issued by the MBTA seeking Proposals to be used to identify the Proposer offering the best value to the MBTA. The RFP includes the Instructions to Proposers, Contract Documents, and Reference Documents. This RFP is issued only to Proposers that are on the Short-List.

"**Request for Qualifications**" or "**RFQ**" means the written solicitation issued by the MBTA seeking SOQs to be used to identify and short-list the most highly qualified Proposers to receive the RFP.

"**Short-List**" means the list of those Proposers that have submitted SOQs that the MBTA determines, through evaluation of the SOQs, are the most highly qualified Proposers and that will be invited to submit Proposals in response to an RFP.

"**Statement of Qualifications**" or "**SOQ**" means the information prepared and submitted by a Proposer in response to this RFQ.

"**Weakness**" means a flaw in the SOQ that increases the risk of unsuccessful Contract performance. A significant Weakness in the SOQ is a flaw that appreciably increases the risk of unsuccessful Contract performance.

3. Overview of the Scope and Contracting Opportunity

3.1 Procurement and Contract Goals

The Massachusetts Bay Transportation Authority's goals for this procurement and Contract are as follows:

A) Procurement of a Contract that will deliver immediate and identifiable improvements for the MBTA and its passengers, early and sustainable improvements in operating performance, and a program of sustainable and affordable enhancements to the passenger experience;

B) Identification of a contractor that will be a long-term partner for the MBTA and that will be committed to a joint goal of ensuring that the new Contract underpins

the MBTA's reputation as one of the leading public transportation authorities in the United States;

C) Selection of a contractor able to ensure that the MBTA's passengers experience a reliable, on-time service that is both safe and comfortable;

D) Innovative delivery of service and infrastructure improvements, on an efficient and economic basis, at a time of financial challenge; and

E) Demonstration of the contractor's ability to deliver the highest possible standards of safe operation on every day of Commuter Rail operation.

3.2 Role of the Massachusetts Bay Transportation Authority

In the context of the Contract, the MBTA is responsible for the following activities:

A) Development of specifications that will meet the needs of the MBTA and its passengers, while reflecting national and international best practices;

B) Principal provision of capital administration of the Contract to ensure the continued delivery of operational excellence and investment in people, infrastructure, and rolling stock throughout the life of the Contract; and

C) Engagement as a committed customer and partner, dedicated to providing significant enhancement to the Commuter Rail Services.

3.3 General Scope and Contracting Form and Methodology

3.3.1 Scope of Services

The scope of services for the Contract will primarily focus on the operations and maintenance of the MBTA's commuter rail system. It is also anticipated that the Contract will include opportunities for the contractor to participate in the MBTA's capital program. Additional detail regarding the scope of services is set forth below. The scope of services for the Contract will be more fully detailed in the RFP.

SECTION 3.3.1.1(C) AMENDED PURSUANT TO ADDENDUM NO. 1

3.3.1.1 Operations and Maintenance

The primary purpose for the Contract is the operations and maintenance of the MBTA's Commuter Rail system. The Commuter Rail Services will include, but not be limited to, the following services:

A) Administration, reporting, and billing associated with the Commuter Rail system, including, but not limited to, all duties related to revenue accounting, ticket sales, recordkeeping, office management, payroll, and human resources;

B) Public information regarding schedules, routes, delays, and other services disruptions; staffing telephone and/or on-line information hotlines; responding to customer complaints and suggestions for service improvements; staffing of a lost and found office; and all other aspects of communication with customers;

C) All transportation services, including train operation; dispatching (which may include, but not be limited to, providing all dispatching services from the MBTA's South Station); adapting to technological change where appropriate; scheduling; staffing; training; revenue collection and accounting; ticketing and customer service; incident management and reporting; special and excursion train operation; management and supervision; severe weather preparation, recovery planning and implementation; rule book compliance; engineer and conductor certification and periodic re-certification; hiring and qualification; labor relations; and compliance with all applicable federal, state, local regulatory requirements, severe weather preparation, recovery planning and implementation;

D) All mechanical services, including revenue and non-revenue rolling stock inspection, maintenance, and repair; cleaning services; maintenance planning and scheduling; material procurement and inventory management; fueling and fuel accounting; staffing, training, and new fleet commissioning; new fleet training and qualification; warranty management; facility maintenance and repair; shop equipment maintenance, repair, and normal replacement; quality control and auditing; seasonal maintenance needs; storm preparation, recovery planning, and implementation; planning, management, and implementation of third-party force account work and capital projects; wreck clearing and incident management and reporting; hiring and qualification; labor relations; and compliance with all applicable federal, state, local regulatory requirements, severe weather preparation, recovery planning and implementation;

E) All engineering services, including planning, scheduling, and implementation of all track inspection, maintenance, repair, and normal replacement; right-of-way infrastructure inspection, maintenance, repair, upgrade, and normal replacement; fixed and moveable bridge inspection, maintenance, and repair; signal and communication system inspection, maintenance, repair, and normal replacement; grade crossing inspection, maintenance, repair, and normal replacement; track car and machinery inspection, maintenance, repair, and normal replacement; environmental infrastructure and output management, inspection, monitoring, maintenance, repair, mitigation, remediation, and normal replacement; material procurement and inventory management; staffing, training, and qualification; management and implementation of third-party force account work; and capital projects; wreck recovery and incident management and reporting; hiring and qualification; labor relations; and compliance with all applicable federal, state, and local regulatory requirements, severe weather preparation, recovery planning and implementation;

F) Operation, maintenance, and service of all environmental systems located throughout the MBTA's service property, the maintenance of all environmental

permits, certificates, and licenses; and proper disposal of any waste or hazardous material; and all other training, procedures, auditing, and services related to compliance with all applicable environmental laws and regulations;

G) All safety and security planning, management, auditing, training, and reporting and compliance with applicable federal, state and local regulatory requirements;

H) All information system data entry, management, development of protocols, reporting, trend analysis, and root cause analysis;

I) System wide Quality Assurance (QA) and Quality Control (QC), development and implementation of QA and QC procedures and protocols, auditing, reporting, and continuous service improvement;

J) Personnel and corporate administration to assure continuous availability of sufficiently trained and qualified staff for all operating, customer service, maintenance, safety (including environmental safety), quality control and reporting functions;

K) Good faith evaluation and cost estimation for pending and new service expansion and any capital improvements and logistical planning, coordination, and cooperation with MBTA neighboring public agencies and property owners to minimize impacts on customer service and service delivery costs;

L) Continuous cooperation with Amtrak, Pan Am Railroad, CSX Transportation, and other third-party partners in providing customer service;

M) Implementation and continuous management of a comprehensive program to increase workforce diversity and improve opportunities for minorities and women in hiring and promotion; and

N) Implementation and continuous management of a comprehensive program to meet or exceed MBTA-established goals for participation by state-certified Disadvantaged Business Enterprises (DBE).

3.3.1.2 Mobilization/Transition

The contractor will be expected to provide a plan for the mobilization and transition of its forces under the Contract, including, preparation of all operational plans required by the MBTA; developing, assembling, and packaging documentation and other submittals sought by the Federal Railroad Administration (FRA), the Massachusetts Department of Transportation, the Massachusetts Department of Environmental Protection, and other regulatory and oversight agencies; development of informational technology and other systems; hiring and training of employees; development of procedures and internal guidelines; transitioning equipment and facilities to the contractor in a manner seamless to the MBTA and its customers; continuous activity at all shops and yards with no impacts on customer service; and good faith labor negotiations.

3.3.1.3 "Early" Capital Program Deliverables

The MBTA is considering identifying a program of "early" capital program deliverables that the contractor would be expected to complete within a relatively aggressive schedule (for example, within the first year of the Contract). These early capital program deliverables would be of a scale that is commensurate with quick delivery.

3.3.1.4 Continuing and Sustaining Capital Improvements

The MBTA is considering capital improvements that the contractor would perform on an annual basis (such as replacement of a certain number of miles of rail and ties each year). These capital improvements are of a scale that would be considered maintenance or "state of good repair" projects.

3.3.1.5 Contractor-Identified Investments

The MBTA would like the contractor to have the flexibility to identify projects that will improve efficiencies, reduce costs, improve safety, and provide the customer with a better commuting experience. Any contractor-identified investments must demonstrate a positive business case, underpinned to performance improvements, capacity enhancements, and revenue growth and would be subject to written MBTA approval.

3.3.1.6 Rolling Stock

The MBTA will be the responsible party for development of rolling stock specifications and procurement of all rolling stock. The MBTA may also consider the potential role of additional capital investment for rolling stock acquisition and/or maintenance. The contractor will have responsibility to maintain the rolling stock in a state of good repair necessary to operate the system.

3.3.1.7 Positive Train Control

During the term of the Contract, the MBTA anticipates concurrent design and installation of its federally mandated Positive Train Control (PTC) system. While the scope of the PTC design and installation is not included in the Contract's scope of services, a third-party contractor responsible for the PTC design and installation will be working within the MBTA's Commuter Rail system to deliver the PTC system. The contractor for the Contract will be required to coordinate with the PTC third-party contractor during the PTC design and installation. Additionally, after the installation of the PTC is completed, the contractor for the Contract will be required to operate and maintain the PTC system.

3.3.2 Form of the Proposed Contract

The form of the Contract will be included in the RFP, and will reflect national and international best practices, as well as MBTA's experiences successfully operating the fifth largest commuter rail system in the country. Some of the anticipated key terms of the proposed Contract are set forth below.

3.3.2.1 Contract Term

A Contract term no less than 8 years and no more than 15 years will be offered. At specified review points during the Contract term, the contractor's performance will be measured relative to continuation criteria, which will be contractually stated. The contractor will be required to successfully achieve the contractual performance metrics in order to be retained for the full term. It is likely that continuation will be subject to mutual agreement. The continuation criteria would be based on such performance metrics as: satisfaction of appropriate stakeholder and passenger matrices; maintaining or exceeding certain operational, schedule, and ridership goals; and on-time and on-budget delivery of improvement projects. In addition to the formal review points (anticipated to be up to two, at specified points in the Contract), the Contract would include biennial reviews of the contractor's overall performance and conformance to the Contract terms and conditions.

3.3.2.2 Revenue

The MBTA will retain revenue risk and the ability to set fares. The contractor will be encouraged to grow revenue by increasing ridership through service quality, increased marketing and reducing fare evasion. Further, the MBTA will also be receptive to additional suggestions from the contractor for the development of additional sources of revenue in addition to fare box income.

3.4 Governing Law

3.4.1 State Law

The laws of the Commonwealth of Massachusetts will govern the Request for Qualifications, Request for Proposals, and Contract.

Proposers should be aware that they will be required to comply with certain certifications and assurances required by the MBTA and Commonwealth of Massachusetts during the RFP phase. The projected list of MBTA and Commonwealth of Massachusetts certifications and assurances is provided below. It is each Proposer's responsibility to ensure that it will be able to comply with the certifications and assurances during the RFP phase, if short-listed. Non-compliance with the MBTA and Commonwealth of Massachusetts certification and assurances at the RFP phase may render a short-listed Proposer non-responsive and disqualify the Proposer from further consideration.

A) Responsible Contractor's Questionnaire;
B) Affidavit of Non-Collusion;
C) Certification of Tax Compliance;
D) Child Care and Other Certifications; and
E) Contractor's Statement in Connection with M.G.L. c. 7, s. 22C.

3.4.2 Federal Law

It is anticipated that the Federal Transit Administration's (FTA) federal cross-cutting requirements will apply to the Contract, and that Proposers will be required to make federal

certifications and assurances at the RFP phase. The projected list of anticipated federal cross-cutting requirements is provided below. It is each Proposer's responsibility to ensure that it will be able to comply with federal certifications and assurances during the RFP phase, if short-listed. Non-compliance with federal cross-cutting requirements at the RFP phase may render a short-listed Proposer non-responsive and disqualify the Proposer from further consideration.

A) Fly America;
B) Energy Conservation;
C) Clean Water;
D) Lobbying;
E) Access to Records and Reports;
F) Federal Changes;
G) Clean Air;
H) Recycled Products;
I) No Government Obligation to Third Parties;
J) Program Fraud and False or Fraudulent Statements and Related Acts;
K) Termination;
L) Government-Wide Debarment and Suspension;
M) Privacy Act;
N) Civil Rights Requirements;
O) Breaches and Dispute Resolution;
P) Transit Employee Protective Agreements;
Q) Disadvantaged Business Enterprise;
R) Incorporation of Federal Transit Administration Terms;
S) Drug and Alcohol Testing;
T) Buy America Requirements;
U) Cargo Preference Requirements;
V) Davis-Bacon and Copeland Anti-Kickback Act;
W) Contract Work Hours and Safety Standards Act;
X) Bonding Requirements; and
Y) Seismic Safety Requirements (if any of the capital improvements involve vertical construction).

3.4.3 Diversity Requirements

As stated above, the successful Proposer will be required to comply with the FTA's Civil Rights and DBE requirements as well as the MBTA's policies regarding Civil Rights and DBE requirements. The successful Proposer will be required to cooperate with the MBTA in implementing the Contract obligations concerning Equal Employment Opportunity (EEO) and DBE utilization in the Contract.

3.4.3.1 Disadvantaged Business Enterprise Stated Goal

The "stated goal" will be those elements of work under the Contract performed by qualified DBEs for amounts not less than the value of the DBE goal. Proposers are hereby notified that a failure to meet the stated goal at the time of Proposal submittal may render the Proposal non-

responsive (in the absence of good faith efforts (as further set out in the RFP), as stipulated by the regulations under 49 CRF 26.53).

3.4.3.2 Disadvantaged Business Enterprise Proposal Submission Information

Proposers on the Short-List will be required to submit the following information:

A) A DBE plan that includes a completed Schedule for Participation of Disadvantaged Business Enterprises form listing those qualified DBEs with which the Proposer intends to contract for the performance of portions of the work under the Contract; specifying the agreed price to paid to each DBE for work; identifying in detail the contract items or parts to be performed by each DBE, including a proposed timetable for the performance or delivery of the contract item; and providing other information as required the by the Schedule for Participation of Disadvantaged Business Enterprises form;

B) A completed original Letter of Intent signed by each DBE listed in the Schedule for Participation of Disadvantaged Business Enterprises;

C) A copy of the most recent certification letter or document of each DBE listed in the Schedule for Participation of Disadvantaged Business Enterprise; and

D) An original affidavit executed by each DBE listed in the Schedule for Participation of Disadvantaged Business Enterprises stating that there has not been any change in its status since the date of its last certification.

For the purposes of this Contract, the MBTA will only accept DBEs that are certified, at the time of Proposal opening, by the Massachusetts Supplier Diversity Office (SO) formally known as the State Office of Minority and Women Business Assistance (SOMWBA).

The DBE participation documentation and forms identified in Section 3.4.3.2(A) through (D) will be incorporated into the Contract.

3.4.3.3 Equal Employment Opportunity

Short-listed Proposers (as well as their subcontractors) that employ 50 or more persons and will be entering into a contract hereunder in an amount of $50,000 or more, will be required to submit an Affirmative Action/EEO Plan for the employment of minorities and women in response to the RFP.

The successful Proposer will be required to give, prior to the commencement of the Contract, notice to all pertinent personnel (i.e., managers, supervisors, employees, unions, and subcontractors) of the Proposer's EEO policies and procedures and its intent and effort to realize such procedures in connection with the EEO requirements that the MBTA is required to follow as an FTA grantee.

The successful Proposer will be required to assign a person the responsibility for securing compliance with and reporting progress to the Proposers and MBTA's Office of Diversity and Civil Rights on all EEO efforts initiated and taken. The successful Proposer will cooperate fully with the MBTA and ensure equal employment opportunity to the maximum extent possible during the term of this Contract.

3.5 Insurance, Bonding and Securities, and Licensing

The successful Proposer may use multiple insurance providers to provide the various types of insurance identified in the RFP; however, the successful Proposer must use one single insurance provider for each type of insurance. The types of insurance, insurance limits, and named insured will be commensurate with the Contract and its level of risk. Details of the insurance requirements will be provided in the RFP.

Proposers on the Short-List submitting a Proposal shall provide Proposal bonds or other forms of security acceptable to the MBTA. The successful Proposer will be required to provide a performance and payment bond and/or other security acceptable to the MBTA.

Prior to the award of the Contract, all legal entities and personnel participating in this procurement must obtain all licenses and permits and take all necessary steps to conduct business in the Commonwealth of Massachusetts and perform under the Contract.

4. Procurement Process

4.1 Rules of Contact and Confidentiality

The following rules of contact shall apply during this procurement process. Contact includes mail, face-to-face, telephone, facsimile, Electronic-mail (E-mail), or formal written communications. As stated in Section 4.4 (Proposer Questions and Answers), the MBTA's point of contact for the procurement is Lauren Coughlin in the Materials Management department.

The rules are designed to promote a fair, unbiased, legally defensible procurement process. The MBTA is the single source of information regarding the Contract procurement.

The procurement process began with the advertisement of the public notice, and is completed with the award of the Contract. These rules of contact are now in effect. The specific rules are as follows:

A) After submittal of SOQs, no Proposer or any of its members may communicate with another Proposer or members of another Proposer with regard to this procurement or the Contract, except that a Proposer may communicate with a subcontractor that is on both its team and another Proposer's team, so long as those Proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the Proposers (communication among Proposers and their members is allowed during MBTA sponsored site visits and meetings);

B) Contact between the Proposers and the MBTA (questions and responses to questions) will only be through the MBTA's Chief Procurement Officer, or designee, and Proposer's designated representatives;

C) Proposers shall not contact MBTA employees, including department heads and any official, who will evaluate SOQs, regarding the procurement except through the process identified above;

D) Any contact determined to be improper, at the sole discretion of the MBTA, may result in disqualification;

E) Any official contact regarding the procurement will be disseminated from the MBTA on MBTA letterhead. Any official contact will be in writing and signed by the MBTA's designated representative; and

F) The MBTA will not be responsible for any oral communication or any other information or contact that occurs outside the official communication process specified herein.

The MBTA will seek to hold all SOQs and subsequent submissions in confidence, to the extent consistent with applicable law, until award or the selection process is terminated. Proposers are advised that all materials received by the MBTA which fall within the definition of a "public record" pursuant to M.G.L. c. 4, §7, cl.26 will be disclosed by the MBTA upon request after Contract award.

The MBTA may require each Proposer to furnish sufficient information indicating the financial and other capacities of the Proposer to perform the proposed Contract. This information may be subject to audit and must be submitted by the Proposer in a format clearly marked "confidential," and the information contained therein will be treated as confidential.

Further, if the Proposer submits information in its SOQ that it wishes to protect from disclosure, the Proposer must do the following:

A) Clearly mark all proprietary or trade secret information as such in its SOQ at the time the SOQ is submitted and include a cover sheet stating "DOCUMENT CONTAINS CONFIDENTIAL PROPRIETARY OR TRADE SECRET INFORMATION" and identifying each section and page which has been so marked;

B) Include a statement with its SOQ justifying the Proposer's determination that certain records are proprietary or trade secret information for each record so defined;

C) Submit one copy of the SOQ that has all the proprietary or trade secret information deleted from the SOQ and label such copy of the SOQ "Public Copy"; and

D) Defend any action seeking release of the records it believes to be proprietary or trade secret information and indemnify, defend, and hold harmless the MBTA and its agents and employees from any judgments awarded against the MBTA and its agents and employees in favor of the party requesting the records, including any and all costs connected with that defense. This indemnification survives the MBTA's cancellation or termination of this procurement or award and subsequent execution of a Contract. In submitting an SOQ, the Proposer agrees that this indemnification survives as long as the confidential business information is in possession of the MBTA.

4.2 Ineligible Firms and Organizational Conflicts of Interest

The Proposer is responsible for disclosing all potential organizational conflicts of interest in its SOQ. A potential organizational conflict of interest may occur in any of the following instances:

A) When a Proposer is unable, or potentially unable, to provide impartial and objective assistance or advice to the MBTA due to other activities, relationships, contracts, or circumstances;

B) Where a Proposer has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract; or

C) Where, during the conduct of an earlier procurement, a Proposer has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

The Proposer is required to provide information concerning potential organizational conflicts of interest in its Proposal. If a potential or real organizational conflict of interest is determined to exist that cannot be neutralized or mitigated, the firm or firms subject to the potential or real organizational conflict of interest will be ineligible to propose. Any determinations rendered by the MBTA regarding organizational conflicts of interest will be final.

The successful Proposer and its members must disclose all relevant facts concerning any past, present, or currently planned interests which may present an organizational conflict of interest. The successful Proposer and its members must state how their interests, or those of their chief executives, directors, key personnel, or any proposed subcontractor may result, or could be viewed as, an organizational conflict of interest.

The MBTA will analyze any potential organizational conflicts of interest in order to avoid, neutralize, or mitigate potential conflicts before Contract award. In addition, any firm that is rendered ineligible through any state or federal action is ineligible to participate with any Proposer/Proposal (or foreign equivalent thereof).

SECTION 4.3 AMENDED PURSUANT TO ADDENDUM NO. 1

4.3 Procurement Schedule

The following represents the current schedule for the procurement process. The schedule is subject to change at the discretion of the MBTA.

Activity	Due Date
Issue Request for Qualifications	May 25, 2012
Pre-Statement of Qualifications Informational Meeting	June 12, 2012
Final Date for Receipt of Proposer's Questions	June 21, 2012
Issue Date for Final Addendum and/or Answers to Proposer's Questions	June 28, 2012
Statement of Qualifications Due Date	July 26, 2012
Short-List Announced	September 4, 2012
Issue Draft Request for Proposals	September 4, 2012
Issue Request for Proposals	October 9, 2012
Proposal Due Date	February 21, 2013
Selection	June 13, 2013

4.4 Proposer Questions and Answers

The MBTA will only consider questions submitted in writing by Proposers regarding the RFQ, including requests for clarification and requests to correct errors. All such requests must be submitted in writing in the format shown on Form RFQ-C (Appendix B) to the Chief Procurement Officer's designee, Lauren Coughlin, Project Coordinator, via E-mail at LCoughlin@mbta.com, or via postal mail or courier at the following address:

MBTA
Ten Park Plaza, Room 2810
Boston, MA 02116-3974.

Only written requests to the above addressee will be considered. No requests for additional information or clarification to any other MBTA office, consultant, or employee will be considered. If the MBTA determines that a change or clarification to the RFQ is needed, all responses will be in writing and shall be delivered without attribution to all Proposers.

Only requests received by 2:00 p.m. (Eastern Time) on the date specified in Section 4.3 (Procurement Schedule) will be addressed.

Questions must include the requestor's name, address, E-mail, telephone, and facsimile numbers and the Proposer he/she represents.

A response to questions will be issued and sent to all recipients of this RFQ not later than seven working days prior to the SOQ due date specified in Section 4.3 (Procurement Schedule).

4.5 Request for Qualifications Addenda

If necessary, the MBTA will issue Addenda to modify conditions or requirements of this RFQ to recipients of this RFQ not later than the date identified in Section 4.3 (Procurement Schedule).

4.6 Pre-Statement of Qualifications and Information Meeting

A pre-SOQ informational meeting and subsequent site visit for the Contract will be held from 9:00 a.m. to 1:00 p.m. on Tuesday, June 12, 2012, at the MBTA Boston Engine Terminal located at 70 R Third Ave., Somerville, Massachusetts 02145. Attendance at the pre-SOQ informational meeting and subsequent site visit is optional.

SECTION 4.7 ADDED PURSUANT TO ADDENDUM NO. 1

4.7 Proposal Stipend

The MBTA may provide a stipend to Proposers on the Short-List. The stipend amount and conditions for receipt will be disclosed to Proposers in the RFP. The MBTA has the authority to use the concepts contained in the Proposal of any Proposer that accepts a stipend.

5. Statement of Qualifications Submittal Requirements

5.1 Date, Time, and Location of Receipt

All SOQs must be received no later than 2:00 p.m. (Eastern Time) on the SOQ due date specified in Section 4.3 (Procurement Schedule). The SOQs must be clearly identified as "STATEMENT OF QUALIFICATIONS FOR MBTA COMMUTER RAIL SERVICES." Submittals must be enclosed in sealed containers and identify the Proposer's official name and address in the upper left hand corner. Late submittals will not be considered and will be returned to the address indicated on the cover of the package.

The Statements of Qualifications shall be submitted to the following address:

Chief Procurement Officer
MBTA
Ten Park Plaza, Room 2810
Boston, MA 02116-3974

Each Proposer will be responsible for obtaining a written receipt appropriate to the means of delivery from the MBTA office specified in this Section 5.1 (Date, Time, and Location of Receipt) at time of delivery of its SOQ. It is the Proposer's sole responsibility to ensure delivery of its SOQ to the MBTA at the time and place specified herein and the MBTA will have no liability or responsibility therefore.

SECTION 5.2 AMENDED PURSUANT TO ADDENDUM NO. 1

5.2 Formatting Requirements

The SOQ must be limited to no more than 50 pages in Sections 3 through 7 of the SOQ (see Appendix A), including required forms but exclusive of dividers and appendices. The 50 page limit excludes the information submitted in response to Sections 5.3.2.1 (Legal) and 5.3.2.2 (Financial). One signed original copy and nineteen copies of the SOQs and appendices must be provided. The signed original copy must be identified as the original on the cover(s) and marked as "Copy 1 of 20 Copies." All copies must be provided in loose-leaf binders. Bound copies will not be accepted. Each copy must be identified on the cover(s) as "Copy # of 20 Copies." The document must be organized to correspond with the outline presented in Appendix A.

5.3 Statement of Qualifications, Organizational and Content Requirements

This section describes the specific information that must be included in the SOQ. An outline of the required format for the SOQ is provided in Appendix A. Required forms for the SOQ are contained in Appendix B. Any material modification to the forms may result in the SOQ being declared non-responsive.

Proposers should provide brief, concise information that addresses the objectives and the requirements consistent with the evaluation factors described in Section 5.3.2 (Evaluation Factor Objectives and Requirements). Lengthy narratives containing extraneous information are discouraged.

5.3.1 Cover Letter

The Proposer must provide a one-page letter indicating its desire to be considered for the Contract and stating the official names and roles of all members on its team. The Proposer must identify a single point of contact for the Proposer and the address, telephone number, fax number and E-mail address where questions should be directed. Authorized representatives of the Proposer's organization must sign the letter. If the Proposer is not yet a legal entity or is a JV, LLC, or general partnership or other group, authorized representatives of all proposed members of the JV, LLC, or general partnership must sign the letter.

The Proposer shall attach the Acknowledgment of Receipt (Appendix B) acknowledging receipt of the RFQ and any Addenda and/or responses to questions issued by the MBTA.

5.3.2 Evaluation Factor Objectives and Requirements

In providing the SOQ, Proposers should be guided by the goals in Section 3.1 (Procurement and Contract Goals) and the objectives listed in Sections 5.3.2.1 (Legal) through 5.3.2.7 (Past Performance). An objective is stated for each evaluation factor to provide Proposers the expectations of the MBTA. The requirements for each evaluation factor and the information to be submitted are listed and described in detail. The SOQ evaluation ratings of Section 6.2.1 (Evaluation Factors for the Request for Qualifications/Statement of Qualifications) will be based on how well the SOQ responds to the requirements and meets or exceeds the goals and the objectives for each of the evaluation factors.

SECTION 5.3.2.1(B)(2) AMENDED PURSUANT TO ADDENDUM NO. 1

5.3.2.1 Legal

A) Objective

To identify legally constituted Proposers able to submit responsive Proposals and enter into the Contract and perform under the Contract.

B) Requirements and information to be provided in Section 1 of the Statement of Qualifications (*see* Appendix A to this RFQ for SOQ section organization)

1) The Proposer must execute Form L-1 (Appendix B), Proposer's Organization Information, for the Proposer's organization;

2) The Proposer must provide evidence that the Proposer and each of its members, if it is a JV, LLC, or partnership, are chartered in the Commonwealth of Massachusetts or hold a Foreign Corporation Certificate, or, to the extent the JV, LLC or partnership has not been formed as of the date the submission of the SOQ, evidence that each member comprising the proposed JV, LLC or partnership are chartered in the Commonwealth of Massachusetts or hold a Foreign Corporation Certificate;

3) If the Proposer is a Joint Venture, Limited Liability Company, or partnership, the Proposer must include the following:

a) Percent equity share held by each member. Each member of a JV, LLC, or partnership must be an equity partner in the organization; and

b) An express statement from each of the equity members of the entity as to their joint and several liability; and

c) Full details of the organizational structure and supporting organization/formation documents including a copy, as applicable, of the JV agreement, LLC operating agreement, or partnership agreement or, if the JV agreement, LLC operating agreement, or partnership agreement has not yet been executed among the parties, a draft of such JV agreement, LLC operating agreement, or partnership agreement or a Memorandum Of Understanding (MOU) stating the terms of such JV agreement, LLC operating agreement, or partnership agreement; and

4) Notarized Power(s) of Attorney

a) If the Proposer is a JV, LLC, or general partnership, notarized Power(s) of Attorney for each member of the JV, LLC, or general partnership, indicating the authority of the member's representative to sign for that member; and

b) Notarized Power(s) of Attorney from each Proposer's member indicating the authority of the Proposer's designated point of contact to sign documents for and on behalf of the Proposer's organization.

5.3.2.2 Financial

A) Objective

To identify Proposers with demonstrated capability to undertake the financial responsibilities associated with the Contract.

B) Requirements and information to be submitted in Section 2 of the Statement of Qualifications (*see* Appendix A to this RFQ for SOQ section organization)

1) Financial Information

The Proposer shall provide financial statements for the Proposer and members of the Proposer's team, as described below, for the three most recent Fiscal Years (FY), audited by a Certified Public Accountant (CPA) in accordance with US Generally Accepted Accounting Principles (GAAP). Financial statements must be provided in US dollars. If audited financials are not available for a member of the Proposer's team, the SOQ must include unaudited financials for such member, certified as true, correct, and accurate by the Chief Financial Officer (CFO) or treasurer of the entity. The Proposers are advised that if any equity member of the selected contractor does not have audited financials, or if it fails to meet the minimum financial requirements stated in the RFQ, the MBTA will require a guaranty of the Contract to be provided by a separate entity acceptable to the MBTA. The SOQ must identify the proposed guarantor for each equity member that does not have audited financials and must include audited financials for each proposed guarantor.

If the Proposer, a member of the Proposer's team, or any other entity for which financial information is submitted as required hereby files reports with the Securities and Exchange Commission (SEC), then such financial statements should be provided through a copy of their annual report on Form 10K. For all subsequent quarters, the Proposer, member of the Proposer's team, or other entity for which financial information is submitted must provide a copy of any report filed on Form 10Q or Form 8-K which has been filed since the latest filed 10K.

Credit ratings must be supplied for each entity to the extent such entities have credit ratings. If no credit ratings exist, include a statement specific that no credit ratings exist for the entity.

The following are the required financial statements:

a) Opinion letter (auditor's report);

b) Balance sheet;

c) Income statement;

d) Statement of changes in cash flow;

e) Footnotes;

f) Financial statement information must be prepared in English. If audited financial statements are prepared in a language other than English, translations of all financial statement information must be accompanied with the original financial statement information;

g) If financial statements are not available in US dollars, the Proposer must include summaries of the income statements and balance sheets for the applicable time periods converted to US dollars by a CPA;

h) Information on any proposed or anticipated changes in the financial condition of the Proposer, its members, and any other entity for which financial information is submitted as required hereby for the next reporting period. References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes. If no material change has occurred and none is pending, the entity shall provide a letter from its CPA, CFO, or treasurer so certifying;

i) If financial statements are prepared in accordance with principles other than US GAAP, a letter from the CPA, CFO, or treasurer of the applicable entity discussing the areas of the financial statements that would be affected by a conversion to US GAAP;

j) A letter from the CPA, CFO, or treasurer for each entity for which financial information is submitted, identifying all off balance sheet liabilities. References to the notes in the financial statements are not sufficient to address the requirement to identify off balance sheet liabilities. If no off balance sheet liabilities exist, the entity shall provide a letter for its CPA, CFO, or treasurer so certifying; and

k) Guarantor letter of support. If the Proposer is a subsidiary of another company, the Proposer must provide a letter from the parent company, signed by a parent company officer, confirming its intention to provide support to the subsidiary's participation in the Contract and indicating the means by which such support may be provided. To the extent the parent company is a guarantor, the parent company must provide all financial statements required for the Proposer in Section 5.3.2.2(B)(1)(a) through (j).

The Proposer shall package the information separately for each separate entity with a cover sheet identifying the name of the organization and its role in the Proposer's organization. The information required in this Section 5.3.2.2(B) will not count toward the page limit.

5.3.2.3 Key Personnel

A) Objective

To identify the best person for the contractor's General Manager (GM) position with demonstrated experience and expertise in and a record of quality performance under operating conditions and responsibilities of a similar nature to the Contract.

B) Requirements and information to be submitted in Section 3 of the Statement of Qualifications (*see* Appendix A to this RFQ for SOQ section organization)

1) Resume

The Proposer must provide a resume for the key personnel identified below. The MBTA understands that one of the major factors for success of any contract is that the team is experienced in the work that it is performing. As such, the MBTA has stated the necessary qualifications of the key personnel in order to provide the Proposer with the criteria that the MBTA will use to evaluate the key personnel proposed.

The Proposer must provide a resume for the key personnel. The resume must include the proposed General Manager's education, work history, length of tenure with the firm involved in the Proposal, and relevant experience with similar operating conditions and responsibilities. The resume should specifically address the key qualifications requirements stated below.

a) General Manager

The General Manager (GM) should have demonstrated a minimum of five years of recent experience (within the last ten years) as a senior operating officer of a passenger rail service, and must have fifteen years experience in rail operations. The GM's experience must be working with passenger rail systems, preferably with an emphasis on commuter rail systems of a similar size and complexity of the MBTA's system. This experience must be reflective of operations that are compliant with the Federal Railroad Administration's 49 Code of Federal Regulations Chapter II, Parts 200 - 269 and the American Public Transportation Association's "Manual of Standards and Recommended Practices for Rail Passenger Equipment." The GM must be on-site on a full-time basis, solely dedicated to the MBTA's Commuter Rail

Service. The GM must have overall responsibility for the Contract, and be empowered by the contractor to make immediate decisions as necessary to maintain the safe and efficient operations of the MBTA's Commuter Rail. The GM must be legally authorized to commit the contractor to enter into supplemental work projects with a value up to $1 million and approve purchases up to $1 million.

If the contractor removes or seeks to replace the key personnel within eighteen (18) months after the contractor commences operator services (i.e. the go-live date), it shall pay MBTA Liquidated Damages in the amount of $100,000.00, unless the contractor has received MBTA's approval to remove the key personnel and approval of the proposed replacement key personnel.

2) References for key personnel

The Proposer must identify references from other employers for the key personnel, including telephone number and E-mail address. References must have been directly involved, as a representative of the employer or contracting party, in work performed by the key personnel in the last ten years. The MBTA reserves the right to contact the reference specifically named by the Proposer in its Proposal or any other additional references as deemed appropriate by MBTA, including references suggested by the Proposer's named references or references known to MBTA through its own knowledge of the transportation industry. The work performed for the reference should be similar in nature to the work to be performed under the Contract. The Proposer shall describe the work performed for the reference.

5.3.2.4 Organization

A) Objective

To identify Proposers that will effectively manage all aspects of the Contract in a quality, timely, and effective manner and will integrate the different parts of its organization collectively and with the MBTA in a cohesive and seamless manner.

B) Requirements and information to be submitted in Section 4 of the Statement of Qualifications (*see* Appendix A to this RFQ for SOQ section organization)

1) An organizational chart of the Proposer;

2) An organizational chart demonstrating how the Proposer will interact with both the MBTA and the Proposer's "home" office; and

3) An explanation of the Proposer's chain-of-command and decision-making process and authority with regard to this Contract.

5.3.2.5 Experience of the Firms

A) Objective

To identify the best firms available with demonstrated experience and expertise in and record of performing quality work under operating conditions and with responsibilities similar in nature to the Contract.

B) Requirements and information to be submitted in Section 5 of the Statement of Qualifications (*see* Appendix A to this RFQ for SOQ section organization)

1) Using Form E-1 (Appendix B), Past Experience Description, the Proposer must provide no more than ten and a minimum of two descriptions of past experience or operating contracts per each member firm of the Proposer's team highlighting relevant experience in the last ten years. The Proposer should describe experience having a scope comparable to that anticipated for the Contract and/or contracts that focus on the following areas:

a) Operation of passenger rail systems;

b) Maintenance of rail infrastructure;

c) Maintenance of rolling stock;

d) Dispatching of commuter rail systems;

e) Implementation and management of superior safety programs;

f) Mobilization/transition;

g) Labor Relations;

h) Improving work-force diversity and DBE participation;

i) Cost savings to the owner;

j) Improving service quality;

k) Improving ridership volume;

l) Improving customer satisfaction;

m) Innovation and technology;

n) Training and employee development;

o) Joint / shared operations with other commuter and passenger railroads; and

p) Capital Improvement

The Proposer must include a reference for each experience cited, including telephone number and E-mail address. References must have been directly involved as a representative for the work performed by the Proposer under the contract. The MBTA reserves the right to contact the reference specifically named by the Proposer in its Proposal or any other additional references as deemed appropriate by MBTA, including references suggested by the Proposer's named references or references known to MBTA through its own knowledge of the transportation industry.

2) Using Form E-2 (Appendix B), Innovative Delivery Information, the Proposer must provide no more than ten and a minimum of two descriptions of instances in past contracts that were similar in nature to the MBTA contract, where the Proposer (or a member of the Proposer's team) used an innovative approach to successfully deliver service and infrastructure improvements on an efficient and economic basis in the last ten years.

The Proposer must include a reference for each contract cited, including telephone number and E-mail address. References must have been directly involved as a client representative for the work performed by the Proposer under the contract. The MBTA reserves the right to contact the reference specifically named by the Proposer in its Proposal or any other additional references as deemed appropriate by MBTA, including references suggested by the Proposer's named references or references known to MBTA through its own knowledge of the transportation industry.

3) Using Form E-3 (Appendix B), Subcontractor Information, the Proposer shall identify subcontractors (including consultants) the Proposer plans to use, to the extent they are known, indicating what type of work such subcontractor is anticipated to perform. The Proposer must submit a maximum one-page summary of experience for each listed subcontractor, including consultants. Proposers must provide an explanation of the rationale for the inclusion of the subcontractor and the proposed division of work.

5.3.2.6 Diversity

A) Objective

To identify Proposers with a strong history of including disadvantaged business enterprises, minority or woman-owned businesses as a part of their teams on publicly-funded contracts and employing a diverse workforce.

B) Requirements and information to be submitted in Section 7 of the Statement of

Qualifications (*see* Appendix A to this RFQ for SOQ section organization)

1) Disadvantaged Business Enterprises, Minority and Woman-owned Businesses

The Proposer shall submit a history of its experience working with disadvantaged business enterprises (DBEs), minority business enterprises (MBEs) and woman-owned business enterprises (WBEs), including experience with the FTA's disadvantaged business enterprise program (or foreign equivalent). The Proposer should highlight DBE/MBE/WBE programs that were of a particular success for the duration of a publicly-funded contract, indicating what was unique to that program to make it a success. The Proposer must include a minimum of three references for its WBE/MBE/DBE experience, including telephone number and e-mail address. The MBTA reserves the right to contact the reference specifically named by the Proposer in its Proposal or any other additional references as deemed appropriate by MBTA, including references suggested by the Proposer's named references or references known to MBTA through its own knowledge of the transportation industry.

2) Equal Employment Opportunity/Workforce Diversity

The Proposer shall submit its past Equal Employment Opportunity history explaining how it has provided opportunities for minorities and women on major contracts and programs.

SECTION 5.3.2.7(B) AMENDED PURSUANT TO ADDENDUM NO. 1

5.3.2.7 Past Performance

A) Objective

To ensure that Proposers with firms or personnel with a history of legal, financial, or safety problems do not adversely impact the Contract generally.

B) Requirements and information to be submitted in Section 6 of the Statement of Qualifications (*see* Appendix A to this RFQ for SOQ section organization)

Using Form PP (Appendix B), Past Performance, the Proposer must provide the information requested below. If a Proposer has no record of relevant past performance or if the information relative to a category is not applicable the Proposer shall enter a declarative statement to that effect on Form PP. If the record of relevant past performance is not available, the Proposer will receive a technical rating of "acceptable-" for this factor as set out in Section 6.2.2 (Rating Guidelines). The Proposer should attach additional sheets to Form PP as necessary. For each instance of litigation, claim, dispute proceeding, arbitration, assessment of liquidated damages, or termination for cause or default, the Proposer must provide the property's name and the name of its current

representative (and current telephone number and E-mail address) who can be contacted for additional information. With respect to the information solicited in this Section 5.3.2.7 (Past Performance), failure to provide this information, conditional or qualified submissions to requests or questions posed (i.e., "to our knowledge," "to the extent of available information," "such information is not readily available," or "such information is not maintained in the manner requested,"), incomplete or inaccurate submissions, statements directing the MBTA to contact a Proposer's attorney, or non-responsive submissions may, in the sole discretion of the MBTA, lead to a lower evaluation rating for this evaluation factor or result in a significant Weakness that would cause the MBTA to declare the SOQ non-responsive.

1) Claims, Dispute Proceedings, Litigation, and Arbitration Proceedings

The Proposer must provide a list of all claims, dispute proceedings, litigation, and arbitration proceedings involving amounts in excess of $1 million and related to performance in which the Proposer or any member of the Proposer's team has been involved during the past five years. The Proposer or any member of the Proposer's team must include all claims, dispute proceedings, litigation, and arbitration proceedings initiated by owners and federal, state, and local regulatory agencies against the Proposer or any member of the Proposer's team or all claims, dispute proceedings, litigation, and arbitration proceedings initiated against owners and federal, state, and local regulatory agencies by third parties and in which the Proposer or any member of the Proposer's team was involved. The Proposer and/or member of the Proposer's team must indicate whether the claim, dispute proceeding, litigation, or arbitration proceeding was resolved against the participant(s) or its insurers/sureties or resulted in reduction in compensation to the participant. The Proposer and/or member of the Proposer's team must indicate any unresolved, outstanding claims, dispute proceedings, litigation, and arbitration proceedings;

2) Termination for Cause or Default

The Proposer must describe the conditions surrounding any contract (or portion thereof) entered into by the Proposer or any member of the Proposer's team over the past five years that has been terminated for cause or default or which required completion by another party. The Proposer and/or member of the Proposer's team must describe the reasons for termination and the amounts involved;

3) Disciplinary Action

The Proposer must indicate any disciplinary action (including, but not limited to, debarment) taken against the Proposer or any member of the Proposer's team within the past five years by the Occupational Safety and

Health Administration, Federal Railroad Administration, Federal Transit Administration, any environmental or governmental agency, or licensing boards, including suspension from the right to propose/bid or removal from any proposer/bid list, or any other entity, agency or regulator (including, but not limited to, foreign entity, agencies or regulators); and

4) Safety Issues/Accidents

The Proposer must disclose any major accidents or events related to the provision of rail services (including commuter rail services) in which the Proposer or any member of the Proposer's team was involved in the last ten years, in which one or more persons was killed or more than one person was seriously injured, as well as any event in the last ten years that might reasonably call into question the Proposer's and/or member of the Proposer's team's ability to safely perform the Contract. For purposes of this RFQ, the term "accident" is not limited to incidents in which a collision occurred. At a minimum, "major accidents" and "serious injury" should include any incidents that resulted in a Federal Railroad Administration investigation (or foreign equivalent thereof).

6. Evaluation and Selection Process

The process for procurement of the Contract will be in accordance with M.G.L. c. 161A. The intent of the MBTA is to award the Contract to the Proposer that provides the Proposal with the best combination of price, quality and value.

Statements of Qualifications submitted in response to this RFQ must include a response to each pass/fail and technical evaluation factor. The Short-List of Proposers that will be invited to submit Proposals will be determined based on evaluation of the pass/fail and technical factors set forth herein. This RFQ sets forth what is required during the RFQ phase of the procurement (*see* Section 5 (Statement of Qualifications Submittal Requirements) for SOQ submittal requirements).

At the end of the SOQ evaluations, the MBTA will determine the Short-List. Proposers on the Short-List will then be invited to provide Proposals.

6.1 Evaluation Process for the Statement of Qualifications

The objective of the RFQ phase of the procurement is to create a Short-List of no more than six of the highest rated Proposers with the general capability (technical, financial and management) and experience necessary to successfully undertake and complete the performance of the Contract. The contractor will have primary responsibility to operate and maintain the MBTA's Commuter Rail system. The MBTA has set high responsibility standards for the contractor that are reflected in the technical evaluation factors of this RFQ and will be reflected in the RFP and the Contract. Specific objectives relating to each of the technical evaluation factors listed in Section 5.3.2 (Evaluation Factor Objectives and Requirements) are included in Sections 5.3.2.1 (Legal) through 5.3.2.7 (Past Performance) of this RFQ.

6.2 Review and Evaluation of the Statement of Qualifications

The information submitted in accordance with Section 5 (Statement of Qualifications Submittal Requirements) will be evaluated in accordance with the pass/fail evaluation factors listed in Section 6.2.1.1 (Pass/Fail Evaluation Factors) and the technical evaluation factors provided in Section 6.2.1.2 (Technical Evaluation Factors).

6.2.1 Evaluation Factors for the Request For Qualifications/Statement of Qualifications

The MBTA has identified the following evaluation factors that are of particular importance to MBTA. This information is provided here to assist Proposers in organizing their teams and preparing their SOQs.

6.2.1.1 Pass/Fail Evaluation Factors

The pass/fail evaluation factors are as follows, and will be rated on the included criteria:

A) **Legal.** The Proposer has presented evidence showing its organization has the legal ability to enter into and perform the Contract.

B) **Financial.** The Proposer has demonstrated an ability to meet financial requirements of undertaking and performing the Contract.

If a Proposer passes all pass/fail evaluations, its SOQ will be further evaluated using the factors for technical rating in Section 6.2.1.2 (Technical Evaluation Factors). If a Proposer fails any single pass/fail requirement resulting in a significant Weakness, the SOQ will be rated as unacceptable, the technical factors will not be rated, and the Proposer will not be included on the Short-List.

6.2.1.2 Technical Evaluation Factors

The technical evaluation factors are as follows, and will be rated on the included criteria:

A) **Experience of the Firms.** The Proposer has identified and demonstrated the operating conditions and responsibilities, experience and expertise in and a record of performing quality work and innovation under contracts similar in nature to the Contract.

B) **Past Performance.** The Proposer has demonstrated that it and its members do not have a history of legal, financial, or safety problems that could adversely impact the Contract generally.

C) **Diversity.** The Proposer has demonstrated a history of including disadvantaged business enterprises, minority or woman-owned businesses as a part of their teams on publicly-funded contracts and employing a diverse workforce.

D) **Organization.** The Proposer has identified an organization that will effectively manage all aspects of the Contract in a quality, timely, and effective manner that

will integrate the different parts of its organization collectively and with the MBTA in a cohesive and seamless manner.

E) **Key Personnel.** The Proposer has identified quality personnel for key management positions with demonstrated experience and expertise in and a record of superior performance under operating conditions and responsibilities of a similar nature to the Contract.

The MBTA shall weigh each technical evaluation factor in the following descending order of importance: (i) Experience of the Firms; (ii) Past Performance; (iii) Diversity; (iv) Organization; and (v) Key Personnel. The MBTA considers the Experience of the Firms technical evaluation factor as much more important than the other technical evaluation factors.

6.2.2 Rating Guidelines

The ratings assigned to the technical evaluation factors will be compiled to determine an overall technical rating for the SOQ. The ratings of each of the technical evaluation factors and the overall technical rating for the SOQ will be arrived at through a consensus process. Numerical scores will not be assigned.

Ratings for each technical evaluation factor and the overall technical rating for the SOQ will be based on the following adjectival rating criteria:

EXCEPTIONAL: The Proposer has provided information relative to its qualifications which is considered to significantly exceed stated objectives/requirements in a beneficial way and indicates a consistently outstanding level of quality. There are essentially no Weaknesses.

GOOD: The Proposer has presented information relative to its qualifications which is considered to exceed stated objectives/requirements and offers a generally better than acceptable quality. Weaknesses, if any, are very minor and no correction is necessary.

ACCEPTABLE: The Proposer has presented information relative to its qualifications which is considered to meet the stated objectives/requirements and has an acceptable level of quality. Weaknesses are minor and can be readily corrected.

UNACCEPTABLE: The Proposer has presented information relative to its qualifications that contains significant Weaknesses and/or unacceptable quality. The SOQ fails to meet the stated objectives and/or requirements and/or lacks essential information and/or is conflicting and/or unproductive. Weaknesses are so major and/or extensive that a major revision to the SOQ would be necessary and/or are not correctable.

The evaluators may also use a plus (+) or minus (-) suffix to further differentiate the strengths or limitations within a technical rating.

6.2.3 Requests for Clarification

The Proposer shall provide accurate and complete information to the MBTA. If information is not complete, the MBTA may either declare the SOQ non-responsive or notify the Proposer that

it will not be allowed to participate further in the procurement until all information required is provided. Any insufficient statements or incomplete affidavits will be returned directly to the Proposer by the MBTA with notations of the insufficiencies or omissions and with a request for Clarifications and/or submittal of corrected, supplemental, or missing documents. If a response is not provided prior to the deadline for submission of the response, the SOQ may be declared non-responsive.

The MBTA may waive minor irregularities in the form of the SOQ that do not alter the quality or quantity of the information provided.

The MBTA may, at its sole discretion, request Clarifications and/or supplemental information from Proposers during the SOQ evaluation and short-list process.

All requests for Clarification will be in writing via E-mail or regular mail, with responses submitted as per the instructions contained in the request for Clarification. Responses must be limited to answering the specific information requested by the MBTA.

The MBTA does not anticipate conducting interviews during the RFQ phase, but reserves the right to do so. If the MBTA elects to conduct interviews, the Proposers will be notified in writing.

In the event a material error is discovered in the RFQ during the SOQ evaluation process, the MBTA will issue an Addendum to all Proposers that have submitted SOQs requesting revised SOQs based upon the corrected RFQ.

6.3 Determination of the Short-List

The MBTA will establish a Short-List of an appropriate number (as determined by the MBTA) of the highest rated Proposers in order to ensure adequate competition (a maximum of six). The Short-List will be created by eliminating the lowest rated Proposers until an appropriate number of acceptable Proposers remain. Neither the overall technical ratings nor the ranking of the Proposers on the Short-List will be disclosed to Proposers during the procurement process.

Any SOQ that is determined to be non-responsive during the initial responsiveness review will not be eligible for inclusion on the Short-List. Any SOQ that receives a consensus rating of "fail" in one or more pass/fail evaluation factors will not be eligible for inclusion on the Short-List. Any SOQ that receives a consensus rating of less than "acceptable(-)" in one or more technical evaluation factors will not be eligible for inclusion on the Short-List.

7. Protests

See Appendix C for the MBTA's "Appeal/Protest Procedures."

8. Massachusetts Bay Transportation Authority Rights and Disclaimers

8.1 Massachusetts Bay Transportation Authority Rights

The MBTA may investigate the qualifications of any Proposer under consideration, may require confirmation of information furnished by a Proposer, and may require additional evidence of qualifications to perform under the Contract. The MBTA reserves the right, in its sole and absolute discretion, to any of the following:

A) Rejection of any or all Statements of Qualifications;

B) Issuance of a new Request for Qualifications;

C) Cancellation, modification, or withdrawal of the Request for Qualifications;

D) Issuance of Addenda, supplements, and modifications to this Request for Qualifications;

E) Modification of the Request for Qualifications process (with appropriate notice to Proposers);

F) Appointment of the selection and evaluation personnel to review SOQs and seek the assistance of outside technical experts in the SOQ evaluation, if necessary;

G) Approval or disapproval of the use of particular subcontractors and/or substitutions and/or changes in SOQs;

H) Revision and modification, at any time before the SOQ due date, of the factors it will consider in evaluating SOQs and to otherwise revise or expand its evaluation methodology. If such revisions or modifications are made, the MBTA will circulate an Addendum to all registered potential proposers setting forth such revisions and modifications;

I) Correspondence with the Proposers responding to this SOQ, including holding meetings, to seek Clarifications and an improved understanding and evaluation of the SOQs;

J) Seeking or obtaining data from any source that has the potential to improve the understanding and evaluation of the SOQs;

K) Waiver of Weaknesses, informalities, and minor irregularities in SOQs;

L) Disqualification of any team that changes its SOQ without MBTA written approval; and/or

M) Refusal to issue an RFQ to a prospective Proposer and to refuse to receive or open an SOQ, once submitted, or reject an SOQ if such refusal or rejection is based upon, but not limited to, the following:

1) Failure on the part of the Proposer or a member of the Proposer's team to pay, satisfactorily settle, or provide security for the payment of claims for

labor, equipment, material, supplies, or services legally due on previous or ongoing contracts with the MBTA;

2) Default on the part of the Proposer or a member of the Proposer's team under previous contracts with the MBTA;

3) Unsatisfactory performance by the Proposer or a member of the Proposer's team under previous contracts with the MBTA;

4) Issuance of a notice of debarment or suspension to the Proposer or a member of the Proposer's team;

5) Submittal by the Proposer of more than one SOQ in response to this RFQ under the Proposer's own name or under a different name;

6) Existence of an organizational conflict of interest or evidence of collusion between a prospective Proposer (or any member of the Proposer's team) and other Proposer(s) (or members of the Proposer's team) in the preparation of an SOQ, proposal, or bid for any MBTA contract; and/or

7) Uncompleted work or default on a contract in another jurisdiction for which the prospective Proposer or a member of the Proposer's team is responsible which, in the judgment of the MBTA, might reasonably be expected to hinder or prevent the prompt and full performance of the Contract, if awarded.

The RFQ does not commit the MBTA to enter into a Contract nor does it obligate the MBTA to pay for any costs incurred in preparation and submission of the SOQs or in anticipation of a Contract. By submitting an SOQ, a Proposer disclaims any right to be paid for such costs.

In no event will the MBTA be bound by or be liable for any obligations with respect to the Contract until such time (if at all) as the Contract, in form and substance satisfactory to the MBTA, has been executed and authorized by the MBTA and approved by all required parties and then only to the extent set forth therein.

8.2 Massachusetts Bay Transportation Authority Disclaimers

In issuing this RFQ and undertaking the procurement process contemplated hereby, the MBTA specifically disclaims the following:

A) Any obligation to award or execute a Contract pursuant to this Request for Qualifications; and

B) Any obligation to reimburse a Proposer for any costs it incurs under this procurement.

In submitting an SOQ in response to this RFQ, the Proposer is specifically acknowledging these disclaimers.

A

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

PASSENGER RAIL PROCUREMENT

REQUEST FOR QUALIFICATIONS APPENDIX A

FORMAT AND ORGANIZATION FOR STATEMENT OF QUALIFICATIONS

Revised June 28, 2012
Pursuant to Addendum No. 1

The outline presented in this Appendix A shall be followed for preparing the Statement of Qualifications (SOQ). Specific content requirements for each section of the SOQ are described in the Request for Qualifications (RFQ) as referenced in the outline. This format has been created to facilitate responses to the RFQ and to facilitate the evaluation and Short-List process.

The Statement of Qualifications shall be packaged into a cover letter and the following seven separate sections:

A) Section One - Legal;

B) Section Two - Financial;

C) Section Three – Key Personnel;

D) Section Four - Organization;

E) Section Five - Experience of the Firms;

F) Section Six - Diversity; and

G) Section Seven - Past Performance.

The sections must consist of loose-leaf pages. The seven sections must be placed together in one three-ring binder.

Text must be in a standard font, a minimum of ten points in height, single-spaced. Pages shall be 8 1/2 inch by 11 inch white paper with simple lettered/numbered dividers for each section. Single sided pages must be used. The Proposer must number each page in each section consecutively (i.e., 1-1, 1-2; 2-1, 2-2; 3-1, 3-2, and so on). The Proposer must center page numbers at the bottom of each page.

The Proposer should make every effort to present information clearly and concisely. Documentation that is difficult to read may be rejected and may lead to disqualification.

The information must be easily reproducible by normal black and white photocopying machines. Color photographs, renderings, and brochures must be adequately bound and suitably protected for handling and circulation during review and evaluation.

Statements of Qualifications will become the property of the MBTA. Copies of each SOQ will be retained after the SOQ evaluation process for the MBTA's files.

Statement of Qualifications Section Number	Section Title and Required Information	Request for Qualifications Reference
	Cover Letter and Acknowledgement Form (attached)	5.3.1
Section One	Legal • Form L-1; • Charter or Foreign Corporation Certificate; • Percent share of each member of the Proposer; • Express statement of joint and several liability, if a JV, LLC, or partnership; • Powers of Attorney; and • Legal structure and supporting documents or description of proposed legal structure.	5.3.2.1(B)
Section Two	Financial • Financial information.	5.3.2.2(B)
Section Three	Key Personnel • Resumes; and • References.	5.3.2.3(B)
Section Four	Organization • Organizational chart of the Proposer; • Organizational chart demonstrating how the Proposer will interact with both the MBTA and the Proposer's "home" office; and • A discussion of the Proposer's chain-of-command and decision-making process and authority.	5.3.2.4(B)
Section Five	Experience of the Firms • Form E-1; • Form E-2; and • Form E-3.	5.3.2.5(B)
Section Six	Diversity • Disadvantaged Business Enterprise and Minority and Woman-Owned Business Enterprise history; • Equal Employment Opportunity history explaining minority and female utilization	5.3.2.6(B)

Statement of Qualifications Section Number	Section Title and Required Information	Request for Qualifications Reference
Section Seven	Past Performance • Form PP	5.3.2.7(B)

B

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

PASSENGER RAIL PROCUREMENT

REQUEST FOR QUALIFICATIONS

APPENDIX B

STATEMENT OF QUALIFICATIONS FORMS

FORMS

	Acknowledgement of Receipt
Form E-1	Past Experience Description
Form E-2	Innovative Delivery Information
Form E-3	Subcontractor Information
Form L-1	Proposer's Organization Information
Form PP	Past Performance
Form RFQ-C	Proposer's Question Request

ACKNOWLEDGMENT OF RECEIPT

(To be attached to Statement of Qualifications cover letter)

_____
(Name of Proposer)

We hereby acknowledge receipt of the Massachusetts Bay Transportation Authority Passenger Rail Procurement Request for Qualifications dated May 25, 2012, and subsequent addenda and responses to questions issued by the MBTA.

ADDENDUM Number	**Date Issued**

Response to Questions Number	**Date Issued**

_____ _____
(Signed) (Date)

_____
(Printed or Typed Name)

_____
(Title)

FORM E-1
PAST EXPERIENCE DESCRIPTION

Name of Proposer: _____

Name of Firm: _____
Years of Experience: _____
Contract Name, Location, Description, and Nature of Work for which the Firm was responsible:
Name of Client (Owner/Agency or Contractor): _____ Address: _____ _____ Contact Name: _____ Telephone number: _____ Owner's Contract No.: _____ E-mail address: _____ Contract Value (US$): _____

FORM E-2
INNOVATIVE DELIVERY INFORMATION

Name of Proposer: _____

Name of Firm: _____
Years of Experience: _____
Contract Name, Location, Description, and Nature of the Innovative Approach for which the Firm was responsible:
Name of Client (Owner/Agency or Contractor): _____ Address: _____ _____ Contact Name: _____ Telephone number: _____ Owner's Contract No.: _____ E-mail address: _____ Contract Value (US$): _____

FORM E-3

SUBCONTRACTOR INFORMATION
(Including Consultants)

Name of Proposer: _____

SUBCONTRACTOR NAME	ADDRESS AND PHONE NUMBER	ROLE UNDER THE CONTRACT

Notes:
(1) Attach a maximum of one page summary of subcontractor experience for each subcontractor listed, including consultants.

FORM L-1
PROPOSER'S ORGANIZATION INFORMATION

PROPOSER			
Name of Entity: Address: Contact Name: Telephone Number:		Title: E-mail:	
LOCAL / REGIONAL CONTACT (if different from above)			
Name: Address: Telephone Number:	E-mail:		
NAME(S) OF PROPOSER FIRMS (if a Joint Venture, Limited Liability Company, or partnership)			
Company Name	**Address and E-mail Address**	**Name of Contact**	**Telephone Number**

FORM PP

PAST PERFORMANCE

(Please provide brief responses.)

Name of Proposer: _____

Firm Name: _____

Claims, Dispute Proceedings, Litigation, and Arbitration Proceedings

Issue/Action	Owner/agency initiated action	Resolution/outcome	Indicate if unresolved or outstanding action	Current owner contact name, telephone number, and E-mail address

Termination for Cause or Default

Contract	Describe reason for termination	Dollar amount involved	Current owner contact name, telephone number, and E-mail address

Disciplinary Action

Action	Describe action taken	Current owner contact name, telephone number, and E-mail address

Safety Issues/Accidents

Issue/Accident	Describe issue/accident	Federal Railroad Administration investigation?	Current owner contact name, telephone number, and E-mail address

Company: _____ **FORM RFQ-C**

Date: _____ **Proposer's Question Request**

This form must be used for the submission of questions pertaining to the Request for Qualifications (RFQ) for the Massachusetts Bay Transportation Authority Commuter Rail Procurement. This form must be submitted to Lauren Coughlin, Project Coordinator, MBTA, at the address specified in Section 4.4 of the RFQ.

Request Number* (1, 2, 3. . . .)	Section	Question	Massachusetts Bay Transportation Authority Response

*Use continuous and sequential Request Numbers through all submittals.

C

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

PASSENGER RAIL PROCUREMENT

REQUEST FOR QUALIFICATIONS APPENDIX C

APPEAL/PROTEST PROCEDURES

Revised April 4, 1996
re: FTA Circular 4220.1C

Revised June, 1996
re: FTA Circular 4220.1D

Revised February 2002

Revised April 14, 2009
re: FTA Circular 4220.1F

Revised May, 2012
re: FTA Circular 4220.1F

Appeal/Protest Procedures

A. INTRODUCTION

The following procedures apply to all MBTA procurements, including those that originate from and are the responsibility of the Materials Management Department (Goods and Services Purchases) and the Design and Construction Department (Construction and Professional Services contracts). Interested parties (Interested Party means an actual or prospective bidder, proposer or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract) must follow the procedures specified for the particular procurement that is being appealed/protested. In the event that an interested party has an appeal/protest for a procurement/contract that involves an area of responsibility not identified herein, the appeal/protest must be sent to the MBTA's Chief of Staff, General Manager's Office, Ten Park Plaza, Boston, for review. A protest will be processed in the time frames and structure as specified below. In addition, the MBTA will disclose information regarding the protest to the Federal Transit Administration (FTA) in writing and notify them informed of any changes or developments affecting the status of the protest.

B. PRE-BID APPEALS – CONSTRUCTION AND PROFESSIONAL SERVICES

1. If it is the opinion of any interested party that the Specifications/Scope of Work or any other requirement of the proposed procurement are in any way ambiguous, incorrect, incomplete or restrictive, the interested party shall contact the Authority, in writing, via U.S. Mail and facsimile, at least ten (10) business days prior to the bid opening date or proposal submittal date. The letter should be addressed to the Director of Contract Administration of the MBTA at 10 Park Plaza – Room 6720, Boston, MA 02116. The letter should identify the procurement that is underway (Contract/RFP number and description) and the specific issue to be addressed. Any protest about the content of a specification is waived if not filed prior to the bid opening or proposal submittal date. The Director of Contract Administration will review the interested parties protest and will respond, in detail, to each substantive issue raised by the interested party within three (3) business days. If the matter requires further evaluation, the Director of Contract Administration will notify the protesting party in writing (by facsimile and U.S. Mail) of the extended review period. A final response will be issued by the Director of Contract Administration upon final review of the matter. One of the following steps will be taken prior to the bid opening date or proposal submittal date:

    a. The Authority may elect to conduct an informal conference on the merits of a protest with interested parties;
    b. If, upon review, the Authority determines that a change should be made to the specification and/or the bid documents, an addendum will be issued to all interested parties;
    c. If the Authority determines that no change should be made to the specification and/or the bid documents, but that it is necessary to clarify any point made by the interested party, a Letter of Clarification will be issued to all interested parties; or
    d. If the Authority determines that neither a change nor a clarification should be made to either the specification or the bid documents, then, the interested party should be notified in a timely fashion in writing (by facsimile and telephone, if possible) of the Authority's determination.

2. If the interested party does not believe that the response addressed his/her concerns, he/she may appeal this decision to the General Counsel, in writing, prior to the bid opening date or the proposal submittal date. The matter will be reviewed and a response will be made in accordance with steps a. through d. above. The bids or proposals may be opened and the Authority may elect to proceed with an award during the pendency of a protest, if the Authority determines that:

    a. The items to be procured are urgently required; or
    b. Delivery or performance will be unduly delayed by failure to make the award promptly; or
    c. Failure to make prompt award will otherwise cause undue harm to the MBTA.

3. ONCE THE GENERAL COUNSEL'S DETERMINATION HAS BEEN MADE, THE AUTHORITY'S DECISION IS FINAL AND WILL NOT BE RECONSIDERED UNLESS THERE IS ADDITIONAL INFORMATION WHICH WAS NOT AVAILABLE TO THE APPEALING PARTY AT THE TIME THE APPEAL WAS MADE.

C. POST-BID APPEALS – CONSTRUCTION & PROFESSIONAL SERVICES

1. Post -Bid appeals by an interested party shall be made in writing via U.S. Mail and facsimile within three (3) business days of the bid opening date or the notification date of a selected proposer and shall be made as follows:

    a. The initial protest or appeal shall be made to the Director of Contract Administration of the MBTA at 10 Park Plaza – Room 6720, Boston, MA 02116 who will collect the factual information pertaining to the appeal.
    b. After discussion and appropriate -review, the Director Contract Administration will forward a recommendation to the Assistant General Manager for Design and Construction (AGM).
    c. If the AGM does not concur with the recommendation-, the AGM will obtain any other additional information required so that a determination can be made, at which time the interested party will be notified in writing of the Authority's determination within five (5) business days. If the matter requires further evaluation, the AGM will notify the protesting party in writing (by facsimile and U.S. Mail) of the extended review period. A final response will be issued by the AGM upon final review of the matter.
    d. If the interested party does not agree with the determination, he/she may appeal directly to the Authority's General Counsel in writing within three (3) business days of the AGM's determination.
    e. The General Counsel will review all facts of the appeal and will make a final determination and will advise the interested party of his decision within five (5) business days. If the matter requires further evaluation, the General Counsel will notify the protesting party in writing (by facsimile and US Mail) of the extended review period. A final written response will be issued by the General Counsel upon final review of the matter.

2. ONCE THE GENERAL COUNSEL'S DETERMINATION HAS BEEN MADE, THE AUTHORITY'S DECISION IS FINAL AND WILL NOT BE RECONSIDERED UNLESS THERE IS ADDITIONAL INFORMATION WHICH WAS NOT AVAILABLE TO THE APPEALING PARTY AT THE TIME THE APPEAL WAS MADE.

D. GENERAL INSTRUCTIONS/INFORMATION

1. In the event that the subject contract procurement is federally funded, all prospective interested parties are notified of the following:

   a. FTA's review of the protest will be limited to the MBTA's failure to have or follow its written protest procedures. The appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation. The protest/appeal is to be in accordance with FTA Circular 4220.1F (as periodically updated).
   b. Note: The interested party must exhaust all administrative remedies with the MBTA before electing to pursue a protest with the Federal Transit Administration (FTA).

2. In the event that a protest is pending:

   a. The MBTA reserves the right to proceed with the procurement, which may include the opening of bids or proposals and the subsequent award of a contract, regardless of the existence of a protest that is pending, in the event that a determination has been made that:

      1. The supplies or services to be contracted for are urgently required;
      2. Delivery or performance will be unduly delayed by failure to make award promptly;
      3. Failure to make a prompt award will otherwise cause undue harm to the MBTA or the Federal Government.
      4. If award is made, the procurement file will be documented to explain the basis of award. Written notice of the decision to proceed with the award will be sent to the protester and other interested parties.

E. PRE-BID APPEALS – GOODS AND SERVICES

1. General: If it is the opinion of any interested party that the specifications are in any way ambiguous, incorrect, incomplete, or restrictive, the interested party shall contact the Authority, in writing via U.S. mail and facsimile, at least five (5) business days, or in the case of designated large procurements, ten (10) business days prior to the bid opening date. The letter should identify the procurement that is underway (IFB/RFP number and description) and the specific issue that is to be addressed. The Chief Procurement Officer will review the interested parties protest and will respond, in detail, to each substantive issue raised by the interested party. One of the following steps will be taken prior to the bid opening date:

   a) The Authority may elect to conduct an informal conference on the merits of a protest with interested parties.
   b) If, upon review, the Authority determines that a change should be made to the specification and/or the bid documents, an addendum will be issued to all interested parties.

c) If the Authority determines that no change should be made to the specification and/or the bid documents, but that it is necessary to clarify any point made by the interested party, a Letter of Clarification will be issued to all interested parties.
d) If the Authority determines that neither a change nor a clarification should be made to either the specification or to the bid documents, then the interested party shall be notified in a timely fashion in writing (by facsimile and telephone if possible) of the Authority's determination.

If the interested party does not believe that the response addresses his/her concerns, he/she may appeal the decision to the General Counsel, in writing, prior to the bid opening date. The matter will be reviewed and a response will be made in accordance with steps a) through d) above. The bids may be opened and the Authority may elect to proceed with an award during the pendency of a protest, if the Authority determines that:

A. The items to be procured are urgently required; or
B. Delivery or performance will be unduly delayed by failure to make the award promptly; or
C. Failure to make prompt award will otherwise cause undue harm to the MBTA.

F. POST-BID APPEALS – GOODS AND SERVICES

1. Post-bid appeals or protests from any interested party shall be made, in writing via U.S. Mail and facsimile, within three (3) business days of the bid opening date and/or the Notice of Award Determination date and shall be made as follows:

a) The protest or appeal shall be made to the Chief Procurement Officer who will review the matter and notify the interested party in writing of the Authority's determination within five (5) business days. If the matter requires further evaluation, the Chief Procurement Officer will notify the protesting party in writing (by facsimile and U.S. mail) of the extended review period. A final response will be issued by the Chief Procurement Officer upon final review of the matter.
b) If the interested party does not agree with the Chief Procurement Officer's determination, he/she may appeal to the Authority's General Counsel in writing within three (3) business days of the Chief Procurement Officer's determination.
c) The General Counsel will review all facts of the appeal and will notify the interested party of his decision within five (5) business days. If the matter requires further evaluation, the General Counsel will notify the protesting party in writing (by facsimile or U.S. mail) of the extended review period. A final response will be issued by the General Counsel upon final review of the matter.

Once the General Counsel's determination has been made, the Authority's decision is final and will not be reconsidered unless there is additional information which was not available to the appealing party at the time the appeal was filed.

2. In the event that a protest is filed prior to award:

The MBTA reserves the right to proceed with the procurement, which may include the opening of bids and the subsequent award of a contract, regardless of the existence of a protest that is pending, in the event that a determination has been made that:

a. The supplies or services to be contracted for are urgently required; or
b. Delivery or performance will be unduly delayed by failure to make award promptly; or
c. Failure to make prompt award will otherwise cause undue harm to the MBTA or the Federal Government.

3. If award is made, the procurement file will be documented to explain the basis for the award. Written notice of the decision to proceed with the award will be sent to the protestor and other interested parties. Interested parties may elect to issue a protest to the FTA if the interested party reasons that the MBTA failed to have or follow written protest procedures. Such protests to FTA must be filed in accordance with FTA Circular 4220.1F.

G. The Common Grant Rule assigns responsibility to recipients of FTA funds for resolving all contractual and administrative issues arising out of third party procurements, including source evaluation and selection, protest of awards, disputes, and claims. FTA charges the recipient with the initial responsibility to resolve protests of third party contract awards. FTA expects each recipient to have appropriate written protest procedures as part of its requirement to maintain or acquire adequate technical capacity to implement the project.

The Common Grant Rule also requires FTA grant recipients to notify FTA when it receives a third party contract protest, and to keep FTA informed about the status of the protest. Recipients are expected to provide FTA with the following information:

1) Subjects: A list of protests involving third party contracts and potential third party contracts that:

   a) Have a value exceeding $100,000 or
   b) Involve a controversial matter, irrespective of amount, or
   c) Involve a highly publicized matter, irrespective of amount.

2) Details: The following information about each protest:

   a) A brief description of the protest,
   b) The basis of disagreement, and
   c) If open, how far the protest has proceeded, or
   d) If resolved, the agreement or decision reached, and
   e) Whether an appeal has been taken or is likely to be taken.

3) When and Where: The recipient should provide this information:

   a) In its next quarterly Milestone Progress Report, and
   b) At its next Project Management Oversight Review, if any.

4) FTA Officials to Notify: When a recipient denies a bid protest, and especially if an appeal to FTA is likely to occur, FTA expects the recipient to inform the FTA Regional Administrator for the Region administering a regional project, or the FTA Associate Administrator for the program office administering a headquarters project directly. FTA also encourages the recipient to keep its FTA project manager informed about protests with which it is involved. In particular, the recipient should contact its project manager about any unusual activity.

If a protest is filed prior to award, all firms sent a copy of the bid documents or firms that have been issued a formal proposal number will be notified of the pending protest.